Opinion No. 1117

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

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Superior Court of the District of Columbia Tax Division

J. B. SHAPIRO and MAURICE C. SHAPIRO, Petitioners	:	
v.	:	Docket No. 2135
DISTRICT OF COLUMBIA, Respondent	:	

MEMORANDUM ORDER

This matter comes before the Court on the District of Columbia's motion to dismiss the petition on the ground that the Court lacks jurisdiction in that the taxpayers failed to first make a complaint to the Board of Equalization and Review as required by D. C. Code 1967, §§47-709 and 47-2405. 1/

On December 29, 1970, the taxpayer-owners filed a petition in the then Tax Court of the District of Columbia contesting a real estate tax assessment for the fiscal year 1971, made pursuant to D. C. Code 1967, §47-709, on Lot ~~18~~ 810 (Sq) in Square 2547, all of which was unimproved. The petition challenges the adjustment in the assessed valuation of this lot originally made by the Board of Equalization and Review in 1969 for fiscal year 1970 and continued at the same level for fiscal year 1971. The challenged assessment for fiscal year 1971 is thus based on the same valuation as that used for fiscal year 1970.

1/ On petitioners' motion, agreed to by the respondent, this case was placed on the reserve calendar on March 31, 1971, with the District of Columbia allowed sixty days after the entry of final judgment in the Berenter case to file responsive pleadings. Although the Berenter case was decided in July, 1972, the District of Columbia's motion to dismiss was not filed until November, 1974.

This matter is now before the Tax Division of this Court as the successor to the District of Columbia Tax Court. Court Reform and Criminal Procedure Act of 1970, P. L. 91-358, 91st Cong. 475, §111, D. C. Code 1973, §§11-921 and 11-1201. The appeal procedure, however, applicable to the 1971 fiscal year is found in D. C. Code 1967, §47-709, which provided as follows:

> Any person aggrieved by any assessment, equalization, or valuation made may within ninety days after October 1 of the year in which such assessment, equalization or valuation is made, appeal from such assessment, equalization or valuation in the same manner and to the same extent as provided in §§47-2403 and 47-2404: Provided, however, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal.

The identical requirements for taking appeals from real estate tax assessments are contained in D. C. Code 1967, §47-2405 and made applicable to §47-709. Petitioners admittedly complied with §§47-709 and 47-2405 in that their petition was timely filed in the Tax Court on December 29, 1970, less than ninety days after October 1 of the year in which the assessment was made. Likewise, the jurisdictional prerequisite of prepayment of the assessed tax pursuant to §47-2403 and made applicable to §47-709 was complied with prior to the filing of the petition. Respondent contends, however, that since there was no increase of valuation for fiscal year 1971 over 1970, D. C. Code 1967, §§47-709 and 47-2405, required petitioners to first make complaint to the Board of Equalization and Review respecting this assessment as a jurisdictional prerequisite to an appeal therefrom to this Court. District of Columbia v. Berenter, 151 U. S. App. D.C. 196, 202, fn. 10 (1972).

Petitioners' failure, however, to make complaint to the Board of Equalization and Review must be considered in light of the peculiar circumstances presented during the period in which a complaint could have been made to the Board. On May 5, 1969, the Board of Equalization and Review determined that the assessment on the property here for fiscal year 1970 should be adjusted upwards from $132,848 to $354,260. The taxpayers in December, 1969, filed a petition in the Tax Court of the District of Columbia, Docket No. 2098, challenging the assessment for fiscal year 1970. This petition was pending throughout 1970 and was not concluded until February 26, 1971, by the entry of a stipulated decision reducing the 1970 assessment from $354,260 to $300,000. While the challenge to the fiscal year 1970 assessment was pending in the District of Columbia Tax Court, the Board of Equalization and Review made an assessment for fiscal year 1971 at the very same level used for fiscal year 1970. While the pleadings are silent as to when the taxpayers received notice of their fiscal year 1971 assessment, the statement of tax due would ordinarily be sent out between July 1 and September 1 of 1970, with the first half installment payable in the month of September. D. C. Code 1967, §47-1001(a). Taxpayers were then faced with the problem of taking the necessary steps to maintain their right to appeal the new assessment pending the outcome of their challenge to the very same assessment applicable to the previous year.

Time, of course, was an important factor as the provisions of §§47-709 and 47-2405 applicable at that time required that an appeal from the fiscal year 1971 assessment must be taken to the District of Columbia Tax Court within the ninety-day period between October 1, 1970, and December 31, 1970. During this very period, on November 2, 1970, per the representations of the parties at the oral argument herein, the District of Columbia, through its attorneys, proposed a stipulation to the taxpayers

under which the assessment for fiscal year 1970 challenged in Docket No. 2098 would be substantially reduced. This stipulation was subsequently agreed to by the parties, and constituted the basis for the February 26, 1971 decision reducing the 1970 assessment. It is apparent that during the period in the latter part of 1970, when petitioners were required to file any petition in the Tax Court if they desired to contest the assessment for fiscal year 1971, attorneys for the District were proposing a substantial modification of the same assessment for fiscal year 1970. Thus, it would have been reasonable for petitioners at that point to view the assessment for 1971 as being higher than that for the preceding year, and no notice having been given prior to March 1, 1970, resort to the Board of Equalization and Review pursuant to §§47-709 and 47-2405 would not then be required as a prerequisite to filing this appeal. In any event, even if the assessment for fiscal year 1971 were viewed as being at the same level as that for 1970, as a practical matter petitioners, during the last five months of 1970, would have been warranted in concluding that there was little likelihood that the Board would alter its determination with respect to the assessment of 1971 while its determination for fiscal year 1970, based on the same valuation, was under review in the Tax Court, or later in November and December, 1970, when its counsel was proposing a reduced valuation as a basis for settlement.

Resort to an administrative body constitutes an exercise in futility where it is clear that the relevant administrative agency will not grant the relief in question and, in such circumstances, the exhaustion of administrative remedy requirement would not obtain. American Federation of Government Employees v. Acree, 155 U.S. App. D. C. 20 (1973). The exhaustion requirement

contemplates an efficacious administrative remedy, and does not obtain when it is plain that any effort to meet it would come to be no more than a futile gesture. Lodge 1858, American Federation of Gov. Emp. v. Paine, 141 U.S. App. D.C. 152, 166 (1970).

Accordingly, under the particular circumstances presented in this case, the Court finds that resort to the Board of Equalization and Review, pursuant to D. C. Code 1967, §§47-709 and 47-2405, would have, beyond a doubt, resulted in a denial of the relief sought, and therefore was not required as a procedural prerequisite to filing the petition. The purpose of the statute in requiring that the complaint first be made to the Board prior to the filing of a petition is to permit the Board an opportunity to review administratively its determination and to place the Board on notice of any potential appeal to the Tax Court. In this instance, the valuation determined by the Board for 1970 was already under appeal, and the Board, by retaining the same valuation for the following year, could reasonably have expected any decision with respect to the fiscal year 1970 valuation to likewise control fiscal year 1971. Consequently, the making of a complaint to the Board would have served no useful purpose.[2/]

The Court has jurisdiction to hear and determine this matter and, therefore, respondent's motion to dismiss must be denied. Further, the parties having agreed that in the event the Court determines it has jurisdiction to hear this matter, the assessment for fiscal year 1971 should be reduced to an amount consistent with the assessment for fiscal year 1970, as determined by the decision entered in Docket No. 2098, it follows that petitioners are entitled to a refund, a computation of the amount to be submitted by the parties.

2/ It is worthy of note that a motion to consolidate the present case with Docket No. 2098 would have appeared appropriate. Had this course been followed, it is reasonable to assume that the decision ultimately entered would have been controlling as to both fiscal years, and the result achieved would have been the same as that reached here.

Accordingly, it is this 6th day of February, 1975,

ORDERED that the respondent's motion to dismiss be and the same is hereby denied. It is

FURTHER ORDERED that the real property tax assessment for the fiscal year 1971 on Lot 18 in Square 2547 shall be and the same is hereby reduced to the assessment determined applicable for fiscal year 1970 by decision entered in Docket No. 2098, and the petitioners are to be refunded the amount of tax computed by the parties and submitted to the Court to have been paid in excess of that due on the modified assessment.

Fred B. Ugast

FRED B. UGAST
Judge

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